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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,537

09/11/2006

James Johnson

26090-049

6154

26691

7590

02/26/2010

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EXAMINER

WALKER, NED ANDREW

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

02/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,537	Applicant(s) JOHNSON, JAMES	
	Examiner NED A. WALKER	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 5 recites the limitation “*the cap includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band*” (emphasis added). It is not clear from the Specification how a locking ring is present on the cap and how it engages the tamper evident band which also exists on the cap. The locking ring is denoted 41 in the Specification which is clearly illustrated on the spout 16 in FIG. 1B which is contradictory to the claims which state the locking ring is present on the cap.

2. The recital in the Specification of features 38 and 41 is confusing and ambiguous. Firstly feature 38 is ambiguously referred to as both “shoulder” and “tamper evident ring lock” and should instead be referred to using only one term to provide consistency and clarity. The issue is further compounded by feature 41 which is referred to as “locking ring”. The naming of two different features as “ring lock” and “locking ring” makes for unnecessary confusion. The confusion is most pronounced in Claim 5 as it is unclear as to which locking feature Applicant is referring to.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation “*the cap*

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includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band in the pre-cap position and in the full cap position the annular projection located on an inner edge of the tamper evident band is engaged beneath the locking ring” (emphasis added) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “32” has been used to designate different features. In FIGS. 1B, 1C, 3 the feature identified by 32 is different from the feature identified by 32 in FIG. 2B.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because there exists confusion between features 38 and 41. Firstly feature 38 is ambiguously referred to as both “shoulder” and “tamper evident ring lock”; this issue is further compounded by feature 41 which is referred to as “locking ring”. The confusion is most pronounced in Claim 5 as it is unclear as to which locking feature Applicant is referring to.

6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

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changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

7. Claim 1, line 13 is objected to because of the following informalities: please change "tamper frangible indicating band" to "frangible tamper indicating band" in order to accurately and consistently reflect the term's antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, claim 5 recites the limitation "*the cap includes a*

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locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band” (emphasis added). It is not clear from the Specification how a locking ring is present on the cap and how it engages the tamper evident band which also exists on the cap. The locking ring is denoted 41 in the Specification which is clearly illustrated on the spout 16 in FIG. 1B and not the cap.

10. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, claim 5 recites the limitation “*the cap includes a locking ring* that cooperatively engages an annular projection located on an inner edge of the tamper evident band” (emphasis added). It is not clear from the Specification how a locking ring is present on the cap and how it engages the tamper evident band which also exists on the cap. The locking ring is denoted 41 in the Specification which is clearly illustrated on the spout 16 in FIG. 1B and not the cap.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 1 and 2 recite the limitation "the flange". There is insufficient antecedent basis for this limitation in the claim.

13. Claim 2 has been amended to incorporate the subject matter of claim 1 since it is now dependent from Claim 1; however, Claim 2 continues to introduce new features such as "an annular flange", "a container", "a spout", etc. which have already been

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introduced in Claim 2; therefore the recitation of these features in Claim 2 are indefinite since it is unclear if they are new features or are reciting former features. There is insufficient or improper antecedent basis for most limitations in the claim.

14. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 recites the claim language "*the cap includes a locking ring* that cooperatively engages an annular projection located on an inner edge of the tamper evident band in the pre-cap position and in the full cap position the annular projection located on an inner edge of the tamper evident band is engaged beneath the locking ring" (emphasis added) in lines 5-7 which is considered incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections (See MPEP § 2172.01). Since the locking ring is denoted 41 in the Specification which is clearly illustrated on the spout 16 in FIG. 1B, it is unclear as to what structural relationship dictates that the locking ring is instead present on the cap and how this structure is arranged. For these reasons, the claim is indefinite.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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16. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by French et al. (US Pat. No. 6,105,802).

French et al. discloses a tamper evident assembly (FIG. 2) for use with a fluid dispensing container for flowable material (FIG. 1), the assembly comprising: an annular flange (lower portion below 22 in FIGS. 1-2) for attachment to a container, a spout (12) projecting upwardly from the flange and having an upper end and a lower end (FIG. 1), the spout defining a dispensing passage therethrough (FIG. 2) and having at least one external annular rib (22); and a cap (30) having a top (32) with an external depending skirt (34) and a frangible tamper indicating band (36) releasably attached to the skirt (via 38), the cap further including an internal skirt (46) depending from the top and spaced inwardly from the external skirt and operable to be received within the fluid passage to provide a seal between the cap and the spout (FIG. 2); the assembly having a first pre-cap position in which the cap and the tamper indicating band are received on the upper end of the spout with the tamper frangible indicating band abutting the external annular rib and the internal skirt being received within the passage and providing a seal therebetween and when the cap is removed from the spout, the frangible tamper indicating band remains attached to the cap, and a second full cap position in which the cap and the tamper indicating band are located adjacent the lower end of the spout with the external annular rib located between the external skirt and the tamper indicating band and the upper end of the spout located adjacent the top of the cap, the internal skirt being received within the passage and providing a seal therebetween (FIGS. 1-2; column 3 lines 1-22) and from which when the cap is removed the tamper indicating

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band detaches from the cap and remains on the spout, thereby providing evidence of tampering (FIGS. 1-2; column 3 lines 17-22), and wherein the cap and spout having cooperating detent and locking elements (14, 16, 18, 20, 48, 50) to allow the assembly, when secured to a container to move from a first pre-cap position where the cap is removably sealed to the spout and the tamper evident band is not broken when the cap is removed for filling, to a second full cap position when the cap is removably sealed to the spout providing that the tamper evident band is broken upon removal of the cap from its second full cap position to dispense flowable material from the container (FIGS. 1-2; column 3 lines 1-22); and the area between the sidewall and the internal skirt forms the annular recess (FIG. 2) in the cap and includes a lower (50) and an upper (48) detent that determine the pre-cap and full cap positions (FIGS. 1-2), respectively for the top portion of the spout that is sealingly and frictionally engaged within the annular recess of the cap when the assembly is in use (FIGS. 1-2; column 3 lines 1-22); wherein the cap includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band in the pre-cap position and in the full cap position the annular projection located on an inner edge of the tamper evident band is engaged beneath the locking ring, whereby in the pre-cap position the frangible tamper evident band is not broken upon removal of the cap, but in the full cap position, the frangible tamper evident band must be broken to remove the cap (FIGS. 1-2; column 3 lines 1-22).

17. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Laciacara et al. (US Pat. No. 6,279,779).

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Laciacara et al. discloses a tamper evident assembly (2) for use with a fluid dispensing container for flowable material (1), the assembly comprising: an annular flange (19) for attachment to a container (FIG. 6), a spout (15, 18) projecting upwardly from the flange and having an upper end and a lower end (FIG. 6), the spout defining a dispensing passage therethrough (FIG. 5) and having at least one external annular rib (28); and a cap (17) having a top (29) with an external depending skirt (30) and a frangible tamper indicating band (37) releasably attached to the skirt (FIGS. 6, 8), the cap further including an internal skirt (46) depending from the top and spaced inwardly from the external skirt and operable to be received within the fluid passage to provide a seal between the cap and the spout (FIGS. 5, 6, 8); the assembly having a first pre-cap position (FIGS. 4, 5) in which the cap and the tamper indicating band are received on the upper end of the spout with the tamper frangible indicating band abutting the external annular rib and the internal skirt being received within the passage and providing a seal therebetween and when the cap is removed from the spout, the frangible tamper indicating band remains attached to the cap (column 6 lines 50-64; FIGS. 4, 5), and a second full cap position (FIG. 6) in which the cap and the tamper indicating band are located adjacent the lower end of the spout with the external annular rib located between the external skirt and the tamper indicating band and the upper end of the spout located adjacent the top of the cap, the internal skirt being received within the passage and providing a seal therebetween (column 6 lines 50-64; FIG. 6) and from which when the cap is removed the tamper indicating band detaches from the cap and remains on the spout, thereby providing evidence of tampering (FIG. 8; column 6 line 65

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– column 7 line 5), and wherein the cap and spout having cooperating detent and locking elements (23, 25; surfaces of 28 and 37) to allow the assembly, when secured to a container to move from a first pre-cap position where the cap is removably sealed to the spout and the tamper evident band is not broken when the cap is removed for filling (FIGS. 4-5), to a second full cap position when the cap is removably sealed to the spout (FIG. 6) providing that the tamper evident band is broken upon removal of the cap from its second full cap position to dispense flowable material from the container (FIG. 8); and the area between the sidewall and the internal skirt forms the annular recess (36) in the cap and includes a lower (25) and an upper (35) detent that determine the pre-cap and full cap positions (FIG. 12), respectively for the top portion of the spout that is sealingly and frictionally engaged within the annular recess of the cap when the assembly is in use (FIGS. 4-8); wherein the cap includes a locking ring that cooperatively engages an annular projection located on an inner edge of the tamper evident band in the pre-cap position and in the full cap position the annular projection located on an inner edge of the tamper evident band is engaged beneath the locking ring, whereby in the pre-cap position the frangible tamper evident band is not broken upon removal of the cap, but in the full cap position, the frangible tamper evident band must be broken to remove the cap (FIGS. 4-8).

Response to Arguments

18. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/
Supervisory Patent Examiner, Art
Unit 3781

NW